

FILED

FEB 07 2005


CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

UNITED STATES OF AMERICA,

CR 04-50131

Plaintiff,

vs.

TRIAL MEMORANDUM

JOHN WATERS,

Defendant.

The United States anticipates introducing the excited utterances of one of the survivors of the vehicle crash. Federal Rule of Evidence 803(2) provides that hearsay statements are admissible when the statement relates to a startling event or condition made while the declarant was under the stress of excitement caused by an event or condition. The relevant factors a court should consider include the time between the startling event and the statement, whether the statement was made in response to an inquiry, the age of the declarant, the physical and mental condition of the declarant, the characteristics of the event, and the subject matter of the statement. United States v. Phelps, 168 F.3d 1048, 1054 (8th Cir. 1999) (citation omitted). “In order for Rule 803(c) to apply, it must appear that the declarant's condition at the time of such statement was such that the statement was spontaneous, excited

or impulsive rather than the product of reflection and deliberation.” Id. (citation and quotation marks omitted); see also United States v. Sewell, 90 F.3d 326, 327 (8th Cir. 1996) (the justification for the excited utterances exception derives from the teaching of experience that the stress of nervous excitement or physical shock stills the reflective faculties, removing an impediment to truthfulness).

The government anticipates that Jim Risse, the first responder at the crash site, will testify that Dorothy Chipps, a crash survivor, informed him that the defendant was driving the vehicle at the time of the crash and that there were other people still inside the vehicle. Risse will likely testify that these statements were made a short time after the crash and that Chipps was extremely upset and excited – because of the crash – at the time. The government asserts that these statements are admissible under Rule 803(2).

Dated this 7th day of February, 2005.

MICHELLE G. TAPKEN
Acting United States Attorney
By:

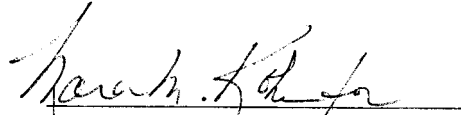


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CERTIFICATE OF SERVICE

I, Jonathan A. Kobes, hereby certify that I served a true and correct copy of the above and foregoing Trial Memorandum on Monica Thomas, Assistant Federal Public Defender, 703 Main Street, 2nd Floor, Rapid City, South Dakota 57701 by hand delivery and facsimile, this 7th day of February, 2005.


Jonathan A. Kobes